Ong Thye Keow & Sons (Realty) Sdn Bhd & Ors v Kilang Papan Chuan Joo Heng Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2–22–624 OF 1996
KAMALANATHAN RATNAM J
27 APRIL 2001

Civil Procedure *— Costs — Withdrawal of suit — Costs in lieu of taxation — Exercise of discretion of court*

There were numerous applications between the plaintiffs, defendant and intervenor in the case. During the hearing of the summons for directions, the plaintiff's counsel requested to withdraw the suit with liberty and agreed that costs be paid.

Held:

The court had taken into consideration the length of time this case has been in court without any progress. In any case, having considered the fact that only two applications were involved together with the filing of the defence on the part of the intervenor, and considering the fact that the court had heard both the applications which involved no complex issues of law or fact and since the question of the award of costs is solely within the discretion of the court (see O 59 r 3(1) of the Rules of the High Court 1980) the court was of the view that a sum of RM1,000 in lieu of taxation would sufficiently compensate the intervenor (see p 343A–B).

[**Bahasa Malaysia summary**

Wujud beberapa permohonan antara plaintif-plaintif, defendan dan pencelah di dalam kes. Semasa perbicaraan saman untuk arahan, peguam plaintif telah memohon kebebasan untuk menarik balik guaman dan bersetuju agar kos dibayar.

Diputuskan:

Mahkamah telah mempertimbangkan tempoh masa kes ini telah berada di mahkamah tanpa apa-apa perkembangan. Dalam apa keadaanpun, setelah mempertimbangkan fakta-fakta bahawa hanya dua permohonan terlibat dengan pemfailan pembelaan di pihak pencelah, dan dengan mengambilkira hakikat bahawa mahkamah telah mendengar kedua-dua permohonan yang tidak melibatkan apa-apa persoalan undang-undang atau fakta yang kompleks dan memandangkan persoalan award kos adalah semata-matanya dalam budi bicara mahkamah (lihat A 59 k 3(1) Kaedah-Kaedah Mahkamah Tinggi 1980) mahkamah berpendapat bahawa jumlah RM1,000 sebagai ganti penetapan kos adalah mencukupi sebagai pamapasan pencelah (lihat ms 343A–B).]

Notes

For cases on costs generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1167–1470.

Legislation referred to

Rules of the High Court 1980 O 59 rr 3(1), 9(4)(b)

Robert Low (*Bahari Choy & Nong Chik*) for the plaintiffs.
CT Chan (*Tai King & Partners*) for the defendant.

Kamalanathan Ratnam J:

Facts

The plaintiffs, as registered owners of a piece of land ('the property'), sued the defendant on 26 November 1996 for vacant possession. The defendant had orally leased the said property from the plaintiffs at a monthly rental of RM3,500. On 20 December 1996, the plaintiffs filed a certificate of non-appearance against the defendant, having served the summons earlier. The plaintiffs then on 5 March 1997 filed summons for execution and obtained an order on 12 March 1997.

One Ong Beng Lye then applied by way of summons on 7 April 1997 to intervene. On 28 April 1997, after hearing submissions I allowed the intervenor's application to intervene and also to apply to set aside the judgment entered against the defendant in default. On 18 June 1997, I heard the application to set aside (encl 27) and on 20 August 1997 I allowed the application and gave the defendant two weeks to file the defence from the date the amended statement of claim was served on it, and that if no amended statement of claim was filed and served on the intervenor within the stipulated time, the intervenor was at liberty to apply to strike out the writ and statement of claim. Parties having complied, the matter came up before me for case management on 13 November 1997, and by consent I fixed the matter before the deputy registrar for hearing of the summons for directions.

On 12 January 1998, the matter again came up before me for hearing of the summons for directions. On that date, the plaintiffs' counsel informed the court that he wished to withdraw the suit with liberty and agreed that costs be paid. Since counsel for the intervenor did not say anything, I exercised my discretion and allowed the application and fixed costs for the intervenor in lieu of taxation at RM1,000.

Findings of the court

I now understand from a letter dated 6 April 2001 from the intervenor's solicitors that he has obtained leave to appeal against my decision. The said letter has indicated that the appeal is only against the award of RM1,000 as costs.

I had taken into consideration the length of time this case has been in court without any progress. In any case, having considered the fact that only two applications were involved together with the filing of the defence on the part of the intervenor, and considering the fact that I had heard both the applications which involved no complex issues of law or fact and since the question of the award of costs is solely within the discretion of the court (see O 59 r 3(1) of the Rules of the High Court 1980 ('the RHC')) I was of the view that a sum of RM1,000 in lieu of taxation would sufficiently compensate the intervenor. I acted pursuant to O 59 r 9(4)(b)of the RHC which reads:

> (4) The court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled —
>
> …
>
> (b) to a gross sum so specified in lieu of taxed costs.

Award in lieu of taxation.

Reported by Wong Ee Lynn